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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 528

NACIREMA OPERATING CO., INC. AND LIBERTY MUTUAL INSURANCE COMPANY, PETITIONERS

v.

WILLIAM H. JOHNSON, JULIA T. KLOSEK AND ALBERT AVERY

No. 663

JOHN P. TRAYNOR AND JERRY C. OOSTING, DEPUTY COMMISSIONERS, PETITIONERS

v.

WILLIAM H. JOHNSON, JULIA T. KLOSEK AND ALBERT AVERY

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR TRAYNOR AND OOSTING, DEPUTY COMMISSIONERS

OPINIONS BELOW

The opinion of the court of appeals (App. 42–65), sitting *en banc,* is reported at 398 F. 2d 900. The opinion of the district court in *Johnson* and *Klosek*

(App. 11–34) is reported at 243 F. Supp. 184. The district court opinion in *Avery* (App. 35–41) and the various opinions of the deputy commissioners (App. 2–11) are not reported.

JURISDICTION

The judgments of the court of appeals (App. 65–68) were entered on June 20, 1968. The petition for a writ of certiorari in No. 528 was filed on September 16, 1968. On September 9, 1968, Mr. Justice Black extended the time for filing a petition in No. 663 to and including October 18, 1968. That petition was filed on October 17, 1968, and both petitions were granted on December 9, 1968. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether longshoremen who are injured on piers while loading a ship's cargo are entitled to compensation under Section 3(a) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 903(a).

STATUTES INVOLVED

The Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. 901 *et seq.*, provides in pertinent part:

> § 902 [Section 2 of the Act]. *Definitions.* When used in this chapter—
>
> * * * * *
>
> (2) The term "injury" means accidental injury or death arising out of and in the course of employment * * *.
>
> * * * * *

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock).

* * * * *

§ 903 [Section 3 of the Act]. *Coverage.*

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

§ 920 [Section 20 of the Act]. *Presumptions.*

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this chapter.

* * * * *

The Admiralty Extension Act of 1948, 46 U.S.C. 740, provides in pertinent part:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

* * * * *

STATEMENT

These cases involve claims for compensation under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, *et seq.* (hereafter sometimes referred to as the "Longshoremen's Act"). The relevant facts, which are not in dispute, are as follows:

1. *The Johnson and Klosek Cases.*—William H. Johnson and Joseph J. Klosek were employed by the Nacirema Operating Company as longshoremen; they were generally engaged in loading and unloading cargo as part of a "gang" of approximately twenty men assigned to a particular vessel by their employer (App. 3, 5, 45). In practice, the entire gang reported to the vessel and two to four men were then ordered back onto the pier to work as "slingers" or "hook-on men" during the loading operation.

The work on the pier is essentially the same as that on board the vessel, and it is not uncommon for the men to rotate positions and pass back and forth between the ship and the pier during a given loading operation (App. 45). Since Nacirema thus had employees engaged in maritime employment upon navigable waters, it was an employer under the Longshoremen's Act, 33 U.S.C. 902(4). Its liability under that Act was insured by The Travelers Insurance Company (App. 3, 5–6).

On November 14, 1963, Johnson and Klosek were stationed in a gondola-type railroad car several hundred feet from shore on the Bethlehem Steel High Pier at Sparrows Point, Maryland. The pier extends six hundred feet into the Patapsco River, in a southerly direction (App. 3, 6). The vessel SS "Bethex" was moored on the east side of the pier, and a crane on that vessel was in the process of hoisting ten-ton drafts of steel beams from the railroad car onto the ship. Johnson and Klosek were engaged in hooking the drafts onto the crane (App. 3, 6).

As a draft was being lifted out of the car, it began to rotate. One end lifted Klosek from the car and dropped him head first onto the pier, causing fatal injuries. The other end crushed Johnson against the side of the car, causing him disabling injuries (App. 3, 6, 44). The deputy commissioner denied both claims for compensation on the ground that neither injury occurred "upon the navigable waters of the United

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States" (App. 4, 7), and the district court upheld the decisions (App. 11–34).[1]

2. *The Avery Case.*—Albert Avery was employed by the Old Dominion Stevedoring Corporation. Like Johnson and Klosek, he was working as a hook-on man at the time of his injury, on December 28, 1961 (App. 10, 45). He was assigned to an open railroad car containing logs which were being hoisted by ship's gear onto a vessel afloat on the Elizabeth River at Norfolk, Virginia. The car was on a city pier, which jutted out from the shore over the waters of the river (App. 10).

Avery was crushed against the side of the car by a swinging draft of logs. The deputy commissioner denied his claim for compensation on the ground that he was not injured "upon the navigable waters of the United States" within the meaning of Section 3(a) of the Act (App. 10, 11). This decision was also affirmed by the district court (App. 35–41).

Avery was awarded compensation under the Virginia Workmen's Compensation Law. On the basis of his average weekly wage of $68.07, he was awarded benefits of $32.40 per week from December 28, 1961, to July 12, 1962 (App. 11). Under the Longshoremen's Act, he would have received two-thirds of his wage, or $45.38 per week. 33 U.S.C. 908(b). Further-

[1] Both Johnson and Klosek's widow and minor children have filed claims, and are concededly entitled to benefits, under the Maryland Workmen's Compensation Act (App. 13–14). Since the employer receives a credit under the federal Act for payments made under the State Act (see 33 U.S.C. 914(k)), the present suits presumably were brought because greater benefits are available in this case under the federal Act.

more, these benefits might have been available for a considerably longer period of time, since the Virginia law contains limitations not found in the federal Act. Compare 9 Va. Code § 65–51 (1950) (now § 65.1–54) with 33 U.S.C. 908(b).

3. *The Court of Appeals Decision.*—The court of appeals, sitting *en banc,* reversed each of the district court decisions.[2] It held that the legislative history of the Longshoremen's Act supported the view that the Act was intended to be "status oriented," thus covering all injuries sustained by longshoremen in the course of their maritime employment (App. 48). Moreover, the court viewed as binding this Court's statement in *Calbeck* v. *Travelers Insurance Co.,* 370 U.S. 114, 130, that "Congress intended to exercise to the fullest extent all the power and jurisdiction it had over the subject-matter. * * * It is sufficient to say that Congress intended the compensation act to have a coverage co-extensive with the limits of its authority" (App. 50). The court further noted that federal maritime tort jurisdiction had been expanded by the Admiralty Extension Act of 1948, 46 U.S.C. 740, and held that the Longshoremen's Act could be read to embody this expanded concept of jurisdiction rather than being limited to that which existed when the Act was passed in 1927 (App. 51–52). In addition, the court held that the statutory standard that the injury occur upon the navigable waters of the United States was

[2] The cases were consolidated below. A fourth case, No. 10060, involved a longshoreman who had drowned after being knocked off a pier into the water. There the deputy commissioner awarded compensation, and the district court and court of appeals affirmed. Certiorari was not sought in that case.

satisfied because small vessels, such as row boats and canoes, are in fact able to navigate beneath the piers on which the injuries occurred (App. 55–56).

The dissenting judges believed that the edge of the pier was intended by Congress to be the dividing line between federal and State coverage (App. 61), and that the Admiralty Extension Act could not be considered to have modified the Longshoremen's Act without an express congressional statement to that effect (App. 62–63).

SUMMARY OF ARGUMENT

With sound basis in the language and legislative history of the Longshoremen's Act, this Court has repeatedly held that the Act adopted the line of demarcation between State and federal authority that was established in *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, and related cases. The *Jensen* line of cases was based on a territorial constitutional interpretation that placed injuries to longshoremen occurring on land and extensions of land (including piers) exclusively within the regulatory jurisdiction of the States—beyond the reach of the federal maritime jurisdiction. Accordingly, the consistent administrative and appellate judicial interpretation, except for the decision below, has been that the Act does not apply to injuries occurring on piers or other extensions of land—that these are not injuries "occurring upon the navigable waters of the United States (including any dry dock)" within the meaning of 33 U.S.C. 903(a). Indeed, in *Swanson* v. *Marra Bros., Inc.*, 328 U.S. 1, this Court said without dissent that the Longshoremen's Act is not applicable to pierside injuries. We find no reason to doubt either

the correctness or the continuing authority of that interpretation as a matter of statutory construction.

This Court has held that the Longshoremen's Act established its own standard of coverage, reflecting the *Jensen* line of decisions, and that the Act's coverage does not expand or contract with changing views about the scope of federal maritime jurisdiction. It follows that the coverage of the Longshoremen's Act was not affected by the mere articulation by Congress in the Admiralty Extension Act of 1948 of a more expanded concept of admiralty jurisdiction than was reflected in the *Jensen* line of cases. Nothing in the language of the Admiralty Extension Act, its legislative history or the subsequent legislative history of the Longshoremen's Act suggests that the latter Act's coverage would in any way be affected by the Extension Act.

Pierside injuries do not occur in a "twilight zone" in which it is doubtful whether State or federal law is applicable. It has always been clear that such injuries are on the State side of "the *Jensen* line of demarcation" adopted in the Longshoremen's Act and are, therefore, compensable only under State compensation statutes. The principle of the "twilight zone," which was adopted by this Court to eliminate uncertainties in this field, should not be converted into an instrument for injecting new uncertainties that would necessitate extensive further litigation. It is for Congress to decide whether, and to what extent, the federal compensation law should be extended beyond the federal side of "the *Jensen* line of demarcation."

ARGUMENT

The government is aware of the policy considerations reflected in the decision of the court of appeals in these cases. As that court's opinion demonstrates, there is much to be said for the proposition that a uniform system of compensation should be available for all injuries suffered by longshoremen in the course of their employment, in lieu of a system whereby different scales of compensation apply, under State or federal law, depending on the situs of the injury. As a matter of legislative policy, Congress might well conclude to expand the Longshoremen's Act to cover pierside injuries, such as are involved in these cases, and there would today be a substantial basis on which the constitutional validity of such a statute could be sustained. However, after careful reconsideration of the question in light of the decision below, we adhere to the view, accepted by the dissenting opinion below, that broad policy considerations are not appropriate in this case, that it remains one of sound statutory construction, and that the Longshoremen's Act was not intended by Congress to be applied to pierside injuries. On the contrary, Congress understood that State law would continue to provide for compensation for such injuries—as it did in these cases.

I. THIS COURT'S SETTLED INTERPRETATION OF THE LONGSHOREMEN'S ACT, AS WELL AS THE ACT'S LANGUAGE, LEGISLATIVE HISTORY AND CONSISTENT ADMINISTRATIVE INTERPRETATION, INDICATE THAT THE ACT DOES NOT APPLY TO PIERSIDE INJURIES

The legislative history of the Longshoremen's Act was extensively reviewed in this Court's opinion in

Calbeck v. *Travelers Insurance Co.*, 370 U.S. 114, and in the government's brief in that case. The Court there noted that the Longshoremen's Act was enacted in response to the decision in *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, which held that State workmen's compensation laws could not constitutionally be applied to injuries that are exclusively within the federal maritime jurisdiction, and the subsequent decisions in *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, and *Washington* v. *Dawson & Co.*, 264 U.S. 219, which struck down congressional attempts to permit State compensation laws to apply in the *Jensen* area. After reviewing the Act's legislative history, this Court in *Calbeck* reiterated the conclusion earlier expressed in *Parker* v. *Motor Boat Sales, Inc.*, 314 U.S. 244, 249, that "'* * * the purpose of the Act was to provide for federal compensation in the area which the specific decisions referred to [in the Senate Report—*Jensen*, *Knickerbocker*, and *Dawson*—] placed beyond the reach of the states. * * *'" 370 U.S. at 128. The *Calbeck* opinion also reiterated the view previously expressed in *Davis* v. *Department of Labor*, 317 U.S. 249, 256, that "* * * the Act adopts 'the *Jensen* line of demarcation' * * * between admiralty and state jurisdiction as the limit of federal coverage * * *" 370 U.S. at 128.

We believe that "the *Jensen* line of demarcation," to which this Court there referred, is the line between injuries "occurring upon the navigable waters of the United States (including any dry dock)" (Sec. 3 (a), *supra*) and injuries occurring on land or extensions of land (including piers). The latter area was

delimited, prior to the enactment of the Longshoremen's Act, in *Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263, as an area in which injuries were governed by State, rather than federal, law. As was explained in the government's brief in *Calbeck* (Pet. Br., No. 532, October Term, 1961, p. 27), *Nordenholt* differed significantly from such decisions as *Western Fuel Co.* v. *Garcia*, 257 U.S. 233, and *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U.S. 469, in which the Court had permitted the application of State compensation laws to injuries occurring on the federal side of "the *Jensen* line of demarcation" but which, though maritime, were "local in character" and a proper matter of "local concern." In *Nordenholt*, as we said in our *Calbeck* brief (Pet. Br., No. 532, October Term, 1961, pp. 28–29):

> * * * the Court held that a state workmen's compensation act could validly be applied to an injury to a stevedore engaged in unloading the cargo of a vessel, since the injury had occurred on a dock which was "an extension of the land." *Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263, 275. The activity, employment, and maritime nature of the contract were virtually identical to those in *Jensen*. The locus of the injury was the distinguishing feature: the injury occurred on the dock, rather than on the ship. Unlike *Garcia* and *Rhode*, the decision did not rest upon the newly evolved "local concern" doctrine but was based upon the then prevailing view of the line of demarcation between admiralty and local law which placed injuries occurring upon a dock (which was upon navigable waters) beyond admiralty jurisdiction and within the exclusive jurisdiction of state law. *Cleveland Ter-*

minal Valley R.R. Co. v. *Cleveland S.S. Co.*, 208 U.S. 316. But see Act of June 19, 1948, 62 Stat. 496, 46 U.S.C. 740. Since maritime law did not apply, there was no conflict between it and local law, and the latter governed. 259 U.S. at 275–276.

It was against this background that the Court in *Calbeck* interpreted the language in Section 3(a) and its legislative history, including the explicit statement in the Senate Report that "* * * injuries occurring in loading or unloading are not covered unless they occur on the ship or between the wharf [3] and the ship so as to bring them within the maritime jurisdiction of the United States." S. Rep. No. 973, 69th Cong., 1st Sess., p. 16, quoted at 370 U.S. 121 n. 10. Accordingly, the Court's holding in *Calbeck* that the Act adopts "the *Jensen* line of demarcation," and indeed the interpretation of the Act reflected in the entire *Calbeck* opinion, seems in every way consistent with the following summary of the Act's legislative history which was contained in the government's brief in *Calbeck* and which has special relevance to the present cases (Pet. Br., No. 532, October Term, 1961, pp. 43–44):

> In short, the legislative history reveals the intent of Congress to provide coverage under

[3] In precise usage, a "wharf" differs from a "pier," in that a wharf is a structure built on the shore while a pier extends out from the shore over the water. In the context of the remainder of the sentence quoted, however, it appears that the word "wharf" was here used in a more generic sense as synonymous with land or extensions of land (including piers) so as to reflect "the *Jensen* line of demarcation" as elaborated in *Nordenholt*.

the Longshoremen's Act for all injuries to employees within the maritime jurisdiction of the United States (including those within the "local concern" doctrine) and to exclude from coverage only those injuries in maritime employment on land or extensions of land where state workmen's compensation applies "by State law" in and of itself.

Although it may appear a little strange today that Congress sought to exclude from the Act's coverage injuries in maritime employment occurring upon extensions of land, the exclusion is easily understandable in light of the problems confronting the draftsmen at the time. The exclusion of such injuries from the maritime jurisdiction of the United States had been settled by authoritative decisions of this Court. *Industrial Commission* v. *Nordenholt Corp.*, 259 U.S. 263 * * *; *Cleveland Terminal Valley R.R. Co.* v. *Cleveland S.S. Co.*, 208 U.S. 316. As the House report explained, the Longshoremen's Act was designed to enable "Congress to discharge its obligation to the maritime workers placed under their jurisdiction by the Constitution." H. Rept. No. 1767, 69th Cong., 2d Sess., p. 20. The Senate report also explained that the Act was limited to injuries "within the maritime jurisdiction of the United States." S. Rept. No. 973, 69th Cong., 1st Sess., p. 16. Thus, in determining the coverage of the Act, Congress accepted the then recognized line of demarcation between federal maritime and state au-

thority.[11] The invalidation by this Court of two prior statutes enacted by Congress to permit state workmen's compensation for workers injured within the maritime jurisdiction made the draftsmen careful to avoid any possible constitutional pitfalls.

[11] Section 3(a) did provide that injuries occurring on dry docks and marine railways were within the coverage of the Act. See *Avondale Marine Ways* v. *Henderson,* 346 U.S. 366, affirming 201 F. 2d 437 (C.A. 5) * * *. Dry docks, however, float on water, and marine railways are apparently regarded merely as extensions of dry docks.

The view that *Nordenholt* reflected a constitutional limitation on the federal maritime jurisdiction (adopted in the Act) persisted for a number of years after the enactment of the Longshoremen's Act. In *Crowell* v. *Benson,* 285 U.S. 22, 55, the Court cited *Nordenholt* for the proposition that "* * * the locality of the injury, that is, whether it has occurred upon the navigable waters of the United States, determines the existence of the congressional power to create the liability prescribed by the statute." See, also, *Minnie* v. *Port Huron Terminal Co.,* 295 U.S. 647, 648; *T. Smith & Son, Inc.* v. *Taylor,* 276 U.S. 179. Though this constitutional interpretation may not seem conclusive today, it cannot be doubted that it was the prevailing interpretation when the Longshoremen's Act was enacted, and was the basis for the Act's coverage provision in Section 3(a), *supra.*

These considerations have led this Court to state without dissent that the Longshoremen's Act does not apply to pierside injuries. *Swanson* v. *Marra Brothers, Inc.*, 328 U.S. 1. That case was a Jones Act suit by a longshoreman who was injured "while on a pier and engaged in loading cargo on a vessel * * *." 328 U.S. at 2. Both the Court and the parties assumed that such an injury is one occurring "on shore" for purposes of interpreting the relationship between the Jones Act and the Longshoremen's Act as that relationship bore on the longshoreman's claim. In holding that he had no right of recovery under the Jones Act, the Court said (328 U.S. at 7):

> We must take it that the effect of these provisions of the Longshoremen's Act is to confine the benefits of the Jones Act to the members of the crew of a vessel plying in navigable waters and to substitute for the right of recovery recognized by the *Haverty* case only such rights to compensation as are given by the Longshoremen's Act. But since this Act is restricted to compensation for injuries occurring on navigable waters, it excludes from its own terms and from the Jones Act any remedies against the employer for injuries inflicted on shore. The Act leaves the injured employees in such cases to pursue the remedies afforded by the local law, which this Court has often held permits recovery against the employer for injuries inflicted by land torts on his employees who are not members of the crew of a vessel. *State Industrial Commission* v. *Nordenholt Corp., supra; Smith & Son* v. *Taylor, supra;* cf. *Minnie* v. *Port Huron Co., supra.*

We find no reason to doubt either the correctness or the continuing authority of this interpretation of the Longshoremen's Act as being inapplicable to pierside injuries. In the year following the statute's enactment, this Court, on the authority of *Nordenholdt,* reaffirmed the applicability of State compensation laws to such injuries. *T. Smith & Son, Inc.* v. *Taylor, supra.* Moreover, from the outset, the Employee's Compensation Commission, which administered the federal Act, declared it inapplicable to pierside and other on-shore injuries (see the Commission's Opinions Nos. 5, 16 and 30 (1927 A.M.C. 1558, 1855; 1928 A.M.C. 417)), and the successor agencies administering the statute have consistently adhered to that view during the entire ensuing period down to and including the present cases. With the exception of the decision below, the courts of appeals which have considered the question have also adhered to this settled interpretation of the Longshoremen's Act. *Nicholson* v. *Calbeck,* 385 F. 2d 221 (C.A. 5), certiorari denied, 389 U.S. 1051; *Travelers Ins. Co.* v. *Shea,* 382 F. 2d 344 (C.A. 5), certiorari denied *sub nom. McCollough* v. *Travelers Ins. Co.,* 389 U.S. 1050; *Houser* v. *O'Leary,* 383 F. 2d 730 (C.A. 9), certiorari denied, 390 U.S. 954.[4]

Whether the statute should have its reach extended beyond that prescribed by Congress is a legislative matter. It is not for the courts to rewrite the statute, as the majority of the court below has done. In its

[4] On October 14, 1968, this Court denied a consolidated motion for leave to file a petition for rehearing in these three cases (393 U.S. 903).

decisions interpreting the Longshoremen's Act, this Court has demonstrated that the judicial task is, instead, to work within the dual system of compensation which Congress established, in response to the *Jensen* decision, and to achieve a maximum degree of stability and certainty within that system.[5]

II. THE ADMIRALTY EXTENSION ACT OF 1948 DID NOT EXPAND THE COVERAGE OF THE LONGSHOREMEN'S ACT TO INCLUDE PIERSIDE INJURIES

This Court has long since held that an interpretation which would enlarge or contract the coverage of the Longshoremen's Act "in accordance with whether this Court rejected or reaffirmed the constitutional basis of the *Jensen* and its companion cases cannot be acceptable" because the "result of such an interpretation would be to subject the scope of protection that Congress wished to provide, to uncertainties that Congress wished to avoid." *Parker* v. *Motor Boat Sales, Inc.*, 314 U.S. 244, 250. Instead, the Court "held that Congress has by the Longshoremen's Act accepted the *Jensen* line of demarcation between state and federal jurisdiction." *Davis* v. *Department of Labor*, 317 U.S. 249, 256. It seems manifest, and inescapable, to us that

[5] Indeed, if a more decisive judicial contribution is to be made toward uniformity in the law in this area, it would seem more appropriate for this Court, in a proper case, to overrule the *Jensen* decision, which was of its own making. This would provide Congress with the additional option of permitting the entire matter of longshoremen's compensation to be handled by the States, thereby achieving state-by-state uniformity and eliminating such fruitless controversies as the present one. There is, of course, no occasion to reexamine *Jensen* in the present cases, which involve only a question of the application of the existing federal Act.

these principles are equally applicable to the mere articulation by Congress in the Admiralty Extension Act of 1948 (Act of June 19, 1948, 62 Stat. 496, 46 U.S.C. 740) of a more expanded scope of admiralty jurisdiction than was reflected in the *Jensen* and companion cases. As was pointed out by the dissenting judges below (App. 62–63), there was no suggestion in the language of the Admiralty Extension Act, in its legislative history, or in the subsequent legislative history of the Longshoremen's Act that the coverage of the latter Act would in any way be affected by the Admiralty Extension Act.

On the contrary, the language of the Admiralty Extension Act, read in its entirety, does not lend itself to such a result; and Congress has clearly indicated that it does not understand that the Act altered the division of federal and State responsibility in this field. This appears from H. Rep. No. 2287, 85th Cong., 2d Sess., p. 2, in which it was said, in 1958, ten years after the enactment of the Admiralty Extension Act, that longshoremen and others "are subject to the protection of State safety standards when performing work on docks and in other shore areas." Similarly, this Court in *Calbeck,* some fourteen years after the enactment of the Admiralty Extension Act, referred repeatedly and without question to "the [Longshoremen's] Act's adoption of the Jensen line between admiralty and state jurisdiction as the limit of federal coverage * * *." 370 U.S. at 128, 126, 130.

III. THE INJURIES IN THESE CASES DID NOT OCCUR IN A "TWILIGHT ZONE" IN WHICH IT WAS DOUBTFUL WHETHER STATE OR FEDERAL LAW APPLIED

The reliance by the court below on the fact that small vessels are able to navigate beneath the piers on which these injuries occurred (App. 55–56) suggests the possibility that this case could be resolved by reliance upon the Act's presumption in favor of coverage (Sec. 20(a), *supra*) because the injuries occurred in a "twilight zone" in which there is doubt as to what law is applicable. See *Davis* v. *Department of Labor*, 317 U.S. 249, 256; *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 128. We do not believe, however, that the principle of the "twilight zone" is properly applicable to pierside injuries.

In *Calbeck*, this Court decided, as we urged it to do, that the federal Act applies to all injuries to longshoremen occurring on the federal side of "the *Jensen* line of demarcation." 370 U.S. at 128. The *Calbeck* decision had a twofold salutary effect, in that (1) it established beyond doubt that all injuries to longshoremen would be covered by either State or federal compensation laws and (2) it eliminated virtually all theretofore existing uncertainty as to the scope of coverage of the federal Act. In this field, as this Court's opinions reflect, a high degree of certainty as to the applicable remedy is an obvious virtue—so long as no injuries will be left uncompensated. This is the situation that has been achieved under *Calbeck*. A holding that the federal Act can also be applied to an undefined category of injuries on the State side of "the *Jensen* line of demarcation," where it was

never thought that the Longshoremen's Act applied (see, *e.g.*, *Swanson* v. *Marra Brothers, Inc., supra*), would inject complex new uncertainties into this field that would necessitate considerable future litigation (see App. 64). If Congress were to choose to expand the coverage of the Longshoremen's Act, it could do so in a way which would minimize such uncertainties. It seems to us that the "twilight zone" concept, which was adopted by this Court to eliminate uncertainties in this field, should not be converted into an instrument for creating uncertainties.

We believe, in short, that it should be left to Congress to decide whether, and to what extent, the coverage of the Longshoremen's Act should be expanded beyond the federal side of "the *Jensen* line of demarcation." The line which Congress drew was clearly based on territorial and not on status considerations. We find no proper legal basis for accepting the judicial innovation formulated by the majority of the court below.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments of the court of appeals should be reversed.

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